

Filed for intro on 02/24/2003
SENATE BILL 782 By
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HOUSE BILL 1462
By Chumney

AN ACT to amend Tennessee Code Annotated, Title 68, to enact the "Tennessee Environmental Policy Act of 2003".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is created by adding sections 2 through 10 of this act as a new, appropriately designated chapter thereto.

SECTION 2. This act shall be known and may be cited as the "Tennessee Environmental Policy Act of 2003".

SECTION 3. The general assembly finds that:

(1) The protection and preservation of Tennessee's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the state and is a matter of the highest public priority;

(2) State agencies should conduct their affairs with an awareness that they are stewards of the air, land, water, plants, animals, and environmental, historical, and cultural resources;

(3) Environmental evaluations should be a part of the decision-making processes of the state; and

(4) Environmental effects reports can facilitate the fullest practicable provision of timely public information, understanding, and participation in the decision-making processes of the state.

SECTION 4.

(a) It is the continuing responsibility of state agencies to use all practicable means, consistent with other essential considerations of state and national policy, to improve and coordinate state plans, functions, programs, and resources so that the state of Tennessee may:

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Ensure for all Tennesseans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk of health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity; and

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

SECTION 5. As used in this chapter:

(1) "Commissioner" means the commissioner of environment and conservation.

(2) "Construction activities" means scraping, plowing, clearing, dredging, grading, excavating, transporting, or filling of land or placement, alteration, or construction of any physical structure, impervious surface, dam, or obstruction.

(3) "Department" means the department of environment and conservation.

(4) "Environmental assessment report" means a report analyzing whether or not a proposed government action is one that is likely to significantly adversely affect the quality of the environment.

(5) "Environmental effects report" means a report on a proposed governmental action that is determined to be an action which may significantly adversely affect the quality of the environment.

(6) "Government agency" means any department, board, bureau, commission, authority, or other agency of Tennessee.

(7) "Proposed governmental action" means any government agency-sponsored legislation, administrative rules, or major program initiative, any proposed construction activities by a government agency or funded by a grant from a government agency, any government agency acquisition of an interest in land of more than five (5) acres, any proposed sale or exchange of more than five (5) acres of state-owned land, or any proposed harvesting of five (5) acres or more of trees over two inches (2") in diameter at breast height, but the term proposed governmental action does not include, among other things, the following:

(A) Any action or undertaking of a municipality, a county, or an authority of a municipality or county, unless more than fifty percent (50%) of the total cost is funded by a grant of a government agency or a grant of more than one hundred thousand dollars (\$100,000) is made by a government agency;

(B) Any action or undertaking of a nongovernmental entity, even if that action or undertaking requires a permit, license, or other approval by a government agency;

(C) The sale of bonds by a government agency or any program of loans funded by the sale of bonds by a government agency;

(D) Litigation decisions made by a government agency;

(E) Emergency measures undertaken in response to an immediate threat to public health or safety; or

(F) Activities in which government agency participation is ministerial in nature, involving no exercise of discretion on the part of the government agency.

(8) "Responsible official" means the official or body in charge of or authorized to act on behalf of a government agency.

SECTION 6.

(a) Prior to commencing a proposed government action, the responsible official shall review the action, in total, to determine if such action is likely to have a significant adverse impact on the natural environment, including the state's air, land, water, plants, animals, historical sites or buildings, or cultural resources. In considering this likelihood, the responsible official shall:

(1) Utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and decision-making which may have an impact on the environment;

(2) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses; and

(3) Document these findings in an environmental assessment report to be submitted to the commissioner.

(b) If the responsible official finds that the action, in total, is not likely to have a significant adverse impact on the natural environment, including the state's air, land, water, plants, animals, historical sites or buildings, or cultural resources, the official shall submit an environmental assessment report to the commissioner for review and concurrence. The commissioner shall publish notice of the receipt of the environmental assessment report in a newspaper of general circulation in the county in which the proposed action is located within seven (7) days of receipt.

(c) At least thirty (30) days prior to approving or denying the responsible official's finding, the commissioner shall conduct a public hearing to receive comments on the environmental assessment report. The commissioner shall consider all comments received either in writing or during the public hearing prior to approving or denying the environmental assessment report.

(d) The commissioner's determination in approving or denying the environmental assessment report shall be by a final order under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If the commissioner denies the finding, the responsible official shall prepare an environmental effects report as provided in section 7 of this act.

SECTION 7.

(a) If the environmental assessment report concludes that a proposed governmental action may significantly adversely affect the quality of the environment, the government agency responsible for such project shall prepare an environmental effects report that will include, but not be limited to, a discussion of:

- (1) The environmental impact of the proposed governmental action;
- (2) Alternatives to the proposed governmental action, including no action;
- (3) Any adverse environmental effects which cannot be avoided if the proposed governmental action is undertaken;

(4) Any irreversible environmental changes which would be involved in the major state project;

(5) Mitigation measures proposed to avoid or minimize the adverse impact of the proposed governmental action;

(6) The relationship between the value of the short-term uses of the environment involved in the proposed governmental action and the maintenance and enhancement of its long-term value;

(7) The effect of the proposed governmental action on the quality and quantity of water supply;

(8) The effect of the proposed governmental action on energy use or energy production; and

(9) Any beneficial aspects of the proposed governmental action, both short-term and long-term, and its economic advantages and disadvantages.

(b) Prior to preparing the environmental effects report, the responsible official shall consult with and obtain the comments of any agency that has jurisdiction by law or special expertise, as well as interested constituents to assist in defining the scope and significance of issues to be analyzed.

(c) In preparing the environmental effects report, government agencies shall focus on the significant environmental issues and alternatives and shall reduce paperwork and accumulation of extraneous background data. Statements shall be concise, clear, and supported by evidence that the government agency has made the necessary environmental analyses.

(d) At least sixty (60) days prior to making a decision as to whether to proceed with a proposed governmental action which may significantly adversely affect the quality of the environment, the responsible official shall publish notice of the availability of the draft environmental effects report in a newspaper of general circulation in the county in

which the proposed action is located and shall make said report available to the public upon request. The responsible official shall provide a copy of the environmental effects report and all other comments to the commissioner.

(e) At least thirty (30) days prior to making a decision as to whether to propose governmental action which may significantly adversely affect the quality of the environment, the responsible official shall conduct a public hearing to receive comments on the draft environmental assessment report.

(f) The responsible official shall consider all public comments, both written and oral, if received within thirty (30) days after the public hearing. The responsible official shall prepare a responsiveness summary for all comments received as a part of the final environmental effects report.

(g) Following the public hearing and after considering comments on the environmental effects report, the responsible official shall adopt a final environmental effects report which shall detail the responsible official's intention to proceed with the proposed governmental action as originally proposed, proceed with changes based on input, or decide not to proceed with the proposed action. Notice of the final environmental effects report including the decision embodied in the report shall be published in a newspaper of general circulation in the county in which the proposed governmental action is located. Copies of the final environmental effects report shall be available to the public.

(h) The decision of the responsible official to proceed with the action as originally proposed, to proceed with an amended action, or to decide not to proceed with the proposed action shall not create a cause of action in any person, corporation, association, county, or municipal corporation; provided, however, the actions of the responsible official in following the procedures set forth in this act may be challenged pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, if

commenced within thirty (30) days after the date of publication of the responsible official's decision made pursuant to subsection (g).

SECTION 8. All government agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the intent, purposes, and provisions of this chapter, including the guidelines issued pursuant to section 10 of this act, and shall propose to the governor not later than January 1, 2004, such measures as may be necessary to bring their authority, regulations, policies, and procedures into conformity with the intent, purposes, and procedures set forth in this chapter.

SECTION 9. Nothing in this chapter shall in any way affect or detract from specific statutory obligations of any government agency to comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it; to coordinate or consult with any other government agency or federal agency; or to act, or refrain from acting, contingent upon the recommendations or certification of any other government agency or federal agency. A government agency shall be deemed to have complied with the requirements of this chapter for a proposed governmental action that requires and has received federal approval of an environmental document prepared in accordance with the National Environmental Policy Act of 1969, as amended, and its implementing regulations.

SECTION 10. Prior to January 1, 2004, the commissioner shall promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to assist government agencies in the preparation of environmental assessment reports and environmental effects reports in accordance with this chapter, including, but not limited to, provisions for:

(1) Criteria for determining if a proposed governmental action may significantly adversely affect the quality of the environment;

(2) Comment upon the proposed governmental action by public and private organizations and individuals;

(3) The possibility of the preparation of single-program environmental effects reports if a series of governmental actions taken individually are of minimal adverse significance on the environment but the cumulative effect of the proposed government actions on the environment is significantly adverse or if a series of proposed government actions are related either geographically or as logical parts in a chain of contemplated actions; and

(4) The possibility of the preparation of modified environmental effects reports on remaining decisions significantly adversely affecting the quality of the environment that are parts of actions begun before but not completed before January 1, 2003.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.